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OFFICE OF PETITIONS

In re Application of	:	
Chhabra, et al.	:	
Application No. 10/080,931	:	ON PETITION
Filed: February 21, 2002	:	
Attorney Docket No. 3645.US.P	:	

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181, filed January 23, 2007.

The petition under 37 CFR 1.181 is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled, "Renewed Petition under 37 CFR 1.181."

The above-identified application became abandoned for failure to timely file a **proper** response to the final Office action mailed August 11, 2005, which set a shortened statutory period for reply of three (3) months. No response having been received, the application became abandoned on November 12, 2005. A Notice of Abandonment was mailed on March 23, 2006.

On petition, applicants have successfully demonstrated that they filed a response on December 12, 2005. However, the response was not proper because it failed to place the application in condition for allowance.

37 CFR 1.135(b), the regulation relevant to the abandonment of this application, provides that (A) the admission of, or refusal to admit, any amendment after final rejection, or any related proceedings, will not operate to save the application from abandonment; and (B) the admission of, or refusal to admit, any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment. It is the applicant's responsibility to take the necessary action in an application under a final Office action to provide a complete reply under 37 CFR 1.113. An applicant should not permit the maximum extendable statutory period for reply to a final Office action to expire while awaiting a notice of allowance or other action, such as an Advisory Action.¹

Applicant should have ensured that the amendment had been entered or applicant should have filed either a Request for Continued Examination (RCE), continuing application, or Notice of Appeal. The last day an RCE, continuing application, or Notice of Appeal could have been filed, with the maximum allowed three month extension of time, would have been February 11, 2006. An applicant should not wait to take action until receipt of an advisory action which might not even be mailed until more than six months after the mailing of the final Office action.

While the showing of record is not sufficient to withdraw the holding of abandonment, applicants are not precluded from obtaining relief by filing a request for reconsideration pursuant to 37 CFR 1.137(b) on the basis of unintentional delay. A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the reply required to the outstanding Office action or notice, unless previously filed; (2) the petition fee set forth in 37 CFR 1.17(m); currently \$750, (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d).

Further correspondence with respect to this matter should be addressed as follows:

¹ MPEP 711.03(c)(III)(C)(2).

By mail: Mail Stop Petitions
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By FAX: (571)273-8300
Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571)272-3207.

Cliff Congo

Cliff Congo
Petitions Attorney
Office of Petitions